IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

S.C.SUIT NO.233 OF 1988.

DAGA ENTERPRISES. PLAINTIFFS.

VS.

K.D.S.FILMS AND ORS. DEFENDANTS.

J.P. Singh with R.K. Midha for
the Plaintiffs.

CORAM: DR.D.Y.CHANDRACHUD,J.
DATED: 01.09.2006.

P.C.:-

1] The Plaintiffs are engaged in the business of distributing, exhibiting and exploitation of cinematograph films, in the Eastern Circuit as it is known in the trade The first defendant had produced a feature film entitled "Bad Aur Badnam".

2] The Second Defendant is a Managing partner of the First Defendant. The Third Defendant has acted as a Bailee of the First Defendant. By an Agreement dated 30th July, 1984 superseded by a Letter of Arrangement

dated 9th November, 1987 the Plaintiffs acquired the rights for distribution, exhibition and exploitation in respect of the aforesaid film in the territory of Assam on a royalty of Rupees One Lakh. By the aforesaid Letter of Arrangement dated 9th November, 1987 the first defendant confirmed that the Plaintiff shall be entitled to get delivery of the release prints of the said film on paying a balance of Rs.85,000/- to the first Defendant. The Plaintiff agreed to pay Rs.3,000/- as contribution towards central publicity out of the publicity fund sanctioned by the first Defendant to the Plaintiffs towards pre-release and release publicity. The Plaintiffs fixed the release of the feature film from 27th November, 1987 in consultation with the First Defendant and purchased the raw stock for taking out two release prints of the film. The raw stock was purchased by the Plaintiffs on 10th November,1987 under an Invoice bearing No.556 from M/s.Raman Cine Corporation for a sum of Rs.65,729,50. The aforesaid raw stock was delivered to the third Defendant acting as

Bailees and Agents of the First Defendant on 11th November,1987. An endorsement of receipt was made by the third Defendant. The Plaintiffs have averred that at the time of handing over the raw stock, they had made it clear to the Third Defendant that the Plaintiffs shall pay the laboratory processing and printing charges of the said two prints to the First Defendant alongwith the balance amount due and payable as per the subsequent Letter of Arrangement dated 9th November,1987. On 16th November,1987 the third Defendant declined to make delivery of prints to the representative of the Plaintiffs. This was recorded by the Plaintiffs in an Advocate's Communication dated 17th November, 1987 addressed to the First Defendant. According to the Plaintiffs, the film could not be released as scheduled on 27th November, 1987 which resulted in loss and damages. The Plaintiffs by their Advocate's telegram dated 17th November, 1987 addressed to the First Defendant and third Defendant recorded that the said Laboratory had refused to deliver the prints in spite of the fact that the

Plaintiffs had deposited the raw stock and were prepared to pay the printing of processing charges and the balance amount payable against the delivery of such prints. By a letter dated 24th November,1987 the First Defendant claimed that the Plaintiffs should have paid the difference to the Third Defendant for preparing the prints but none the less agreed to give instructions to the third defendant. The Plaintiffs have averred that at Gauhati and Dimapur an amount of Rs.10,000/-was spent towards pre-release publicity. As a result of the breach of contract by the first and second Defendant the Plaintiffs aver that they were compelled to purchase other films from third party. distributors on a deposit of Rs.10,000/-.

4] Accordingly the Plaintiffs, seek a declaration that the Agreement dated 13th July, 1984 as modified by the letter of Credit dated 9th November, 1987 stands validly cancelled and/or terminated and for a decree and order directing the First and Second Defendants to pay a sum of Rs.15,000/- which

was paid by the Plaintiffs under the letter of Arrangement dated 9th November, 1987. The Plaintiffs also seek damages which are quantified at Rs.70,000/- and reimbursement of the value of raw stock in the amount of Rs.65,629.50.

5] The Defendants have been served with the Suit Summons and an affidavit of service is filed. No Written Statement has been filed by the Defendants.

6] By an order dated 24th June, 2006 this Court directed that the Suit shall proceed against the Defendants without their Written Statement. However, the Court did not consider it appropriate to pass a decree Under Order VIII Rule 10 of the Code of Civil Procedure,1908 and the Plaintiffs were directed to adduce evidence in support of their case. Accordingly an Affidavit of evidence in lieu of examination-in-chief has been tendered and taken on record. A Compilation of the documents upon which reliance is placed, has been tendered and

taken on record.

7] The Claim of the Plaintiffs stands proved. The Suit stands decreed as against the First and Second Defendants for the amount of Rupees 1,50,629.50 as prayed. The Suit shall stand dismissed as against the third Defendant since no relief has been claimed against him at the hearing

8] The Plaintiffs shall be entitled to the Costs of the Suit from the First and Second Defendants.

[DR.D.Y.CHANDRACHUD,J]